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ABSTRACT

This article reviews the current status of collective bargaining in higher education, with a special focus on representation in two-year institutions. After identifying the extent of representation by bargaining agents, the year in which first faculty collective bargaining contracts have been signed, and distinguishing among four-year and two-year institutions and public and private ones, the current status of state collective bargaining legislation is summarized, with an eye toward how much more activity may be generated as additional permissive state legislation is enacted. The main thrust deals with "who bargains with whom" rather than "about what." Three organizations that have emerged as the major contenders for the representation of faculty interests in collective bargaining, the American Federation of Teachers, the National Education Association, and the American Association of University Professors, are discussed in terms of national positions as well as numbers of contracts negotiated. Independent bargaining representatives are similarly reviewed. In addition to the extensive description of the collective bargaining issue, the author speculates as to future developments in the field. (Author/AH)

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"WHO BARGAINS WITH WHOM: WHAT'S PAST IS PROLOGUE"

by Joseph N. Hankin

Competing bargaining representatives are aware of the fact that, while 30.9 per cent of faculty members, teaching 33.2 per cent of the students in 19.8 per cent of America's community and junior colleges are already covered by collective bargaining, as soon as permissive legislation is enacted in the 27 States without it, we may expect a large increase in these figures.

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"WHO BARGAINS WITH WHOM: WHAT'S PAST IS PROLOGUE"

In the heat of campaigning in late 1972 at Temple University the three competing prospective bargaining representatives had this to say:

"The only thing that will give power to the Faculty Senate is Collective Bargaining." (American Federation of Teachers)

"I've become persuaded that we've been in an adversary relationship all the time". (National Education Association)

"We are living and breathing by the good graces of the Board of Trustees." (American Association of University Professors)

The sources of these remarks have been identified but it is the contention of this author that increasingly we are finding that we could have easily mixed up the sources and it would make no difference. The three major bargaining representatives indicated above, as well as the independent agents, seem to have evolved to a point where their platforms, at least at the local level, have become remarkably similar.

In American higher education formal recognition has been given on 359 campuses to 245 bargaining representatives. A very significant share of this activity has been in the nation's community and junior colleges. Approximately 30.9 per cent of community and junior college faculty members teach at 227 institutions and campuses that are organized and have chosen a formal bargaining representative. These institutions and campuses represent 33.2 per cent of the students in two-year institutions. This article, while it refers to the total picture (four-year as well as two-year colleges), focuses on representation in the two-year institutions of higher learning and discusses the degree of representation by three major national organizations with local affiliates as well as independent agents. We know that many hundreds of other institutions meet informally with their faculty members in informal bargaining or discussion, but concentration in this article is upon formal arrangements.

After identifying the extent of representation by bargaining representatives, the year in which first faculty collective bargaining contracts have been signed, and distinguishing among four-year and two-year institutions and public and private ones, the article will summarize the current status of state legislation with an eye toward how much more activity practitioners in higher education might find as additional permissive state legislation is enacted.

This article concerns itself simply with "who bargains with whom" rather than "about what". Past work by the author has dealt with other significant items such as unit determination, negotiable items and the like but these are excluded in the present writing (except perhaps as examples in the section on faculty senates, councils, and associations vis à vis the more formal bargaining representatives).

A brief word of thanks before proceeding: all data is the latest available as of the end of 1974* unless otherwise specified. The author is grateful indeed to the National Center for the Study of Collective Bargaining in Higher Education at Baruch College, the City University of New York, 17 Lexington Avenue, New York, New York 10010, especially Dr. Maurice Benewitz, Director, Dr. Thomas Mannix, Assistant Director, and to Mr. John Allen, Librarian, and to the Academic Collective Bargaining Information Service, 1818 R Street, N.W. Washington D.C. 20009, especially Dr. George Ward Angell, Director and Dr. Edward Kelley, Assistant Director, and to Dr. Thomas Emmet and Dr. Virginia Lee Lussier, as well as other authors cited in the text. These two centers have gathered the most up-to-date and comprehensive statistics concerning contracts, institutions, and agents and they are to be complimented for their superb work in assisting practitioners (both employers and employees) in higher education.

*In early 1975 two additional private two-year institutions were added: Becker Junior College in Massachusetts and Mitchell College in Connecticut. Despite the fact that they would add significantly to the ranks of private two-year colleges with agents or contracts, they are omitted from this study because of the 1974 cut off date.

The serious reader might wish to secure some of their general descriptive literature in order to fully appreciate the parameters of the services they render.

A word about counting: there can easily be confusion over terminology. Agents are recognized; they bargain contracts; these contracts cover institutions; each institution may have more than one campus. Hence we can refer to four different counts: agents, contracts, institutions and campuses. Thus in some of the figures cited in this article, as of the end of 1974 there were 359 campuses (136 four-year and 223 two-year) represented by 245 agents (78 four-year and 167 two-year). Some 277 of these campuses (112 four-year and 165 two-year) were covered by 174 contracts (48 four-year and 126 two-year). Note: These figures differ slightly from those used in a later section on just two-year colleges for reasons explained there. It is understood of course that not all institutions with agents have completed their negotiations in 1974, (or for that matter as recently as early 1975) and hence the seeming discrepancies in numbers can be even greater. However, all figures have been triple-checked for accuracy against a master list of institutions and campuses of institutions with agents and contracts and such information is available from either of the sources cited above or the present author who has weaved the various studies together.

MAJOR BARGAINING REPRESENTATIVES*

"The issue of affiliation has not been decided. Nor is it likely that all faculty will identify with the same organization. The diversified interests of community college teachers may prescribe affiliation with more than one group. But regardless of whether one organization is chosen or many, the critical issue is the possibility that organizations external to the community college will, as a result of value judgments required for membership, fragment this institution or divert it from its designated role." Edmund J. Gleazer, This is the Community College.

*For a comprehensive treatment of the subject see the work of Virginia Lee Lussier.

However, before we proceed with statistics it is important that a few words be said about each of the major prospective bargaining representatives. Theoretically the faculty can be represented by an internal representative body, an external representative body, or a combination internal/external group such as a chapter of a collective bargaining agent. This is further complicated by the division of responsibility between one or more of these groups on campus as shall be seen later in this article.

Three national organizations have become the major contenders for the purpose of representing faculty interests in collective bargaining with employing institutions: the National Education Association, the American Federation of Teachers, and the American Association of University Professors. In addition this section will refer to independent agents as well as bargaining with the on-campus faculty senate, or council, or association. Attention to the positions taken by the national organizations on a country-wide basis must be tempered by the fact that local chapters frequently modify these positions based on conditions at individual institutions and what is produced is more a product of the participants and local conditions than of the general position taken by the parent bodies on a national level.

National Education Association Initially founded as the National Teachers Association in 1857, the Association's purpose has been to "elevate the character and advance the interests of the profession of teaching and...promote the cause of popular education in the United States." It has been concerned with improving the position of teaching as a profession by enhancing training, requiring more and better education, formalizing the requirements for teachers' credentials, etc. Traditionally it served the interests of administrators as well as teachers and because of its predominant activity in the K-12 sector of public education it had to overcome two hurdles: the epithet hurled at it largely by the American Federation of Teachers that it was a "company union", and its seeming lack of early interest in higher education.

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Prior to 1960 the NEA shied away from collective bargaining. However, in that year a Resolution on Representative Negotiations was adopted and it was suggested that conditions of employment were proper subjects for discussion between schools and NEA Chapters. In the 1962 meeting the Association resolved "to support Professional Negotiations as opposed to 'Collective Bargaining', and to insist upon the right of professional associations to participate in determining policies and to join in establishing procedures to 'reach mutually satisfactory agreements'." From 1963-1968 the Association adopted resolutions further embellishing upon this basic statement and including the establishment of negotiations procedures, the use of machinery such as state mediation and arbitration boards, the establishment of professional grievance procedures, and support for affiliates once a strike had occurred. While the major thrust still was upon the K-12 sector, increasing attention was being spent on organizing in higher education.

Initially the NEA had become involved and interested in higher education through its interest in teacher-training programs. This led to the formation of the Association for Higher Education (AHE), which accepted college administrators as well as teachers. In the middle and late 1960's relationships between the AHE affiliate and the NEA became increasingly strained as the latter announced more teacher-oriented collective negotiations policies, and in 1968 the AHE officially split away from the NEA, and became the American Association for Higher Education, the AAHE. It was replaced in the NEA by an umbrella organization known as the NHEA (National Higher Education Association) which in turn had three separate components: one for two-year faculty members (NFACJC--National Faculty Association for Community and Junior Colleges), one for four-year college faculty members (NSP--National Society for Professors), and one for administrators (NACUA--National Association for College and University Administrators).

Because of its increasing attention to higher education in the middle and late 1960's the association seemed to have licked the K-12 image it previously had projected, and, perhaps persuaded by the competition it was receiving from the American Federation of Teachers, it seemed to have overcome its former reluctance to support work stoppages (in 1966 80% of all teachers strikes in the nation were with NEA affiliates whereas there had not been a single strike from 1952 to 1963 or again in 1965 in any NEA Chapter Institution); in 1968 the former official opposition to work stoppage was dropped by the Association. By 1970 it had as many contracts (See Table 1a) with institutions of higher learning as the American Federation of Teachers, and since that time has slowly forged ahead to a point where in 1974 it has 95 agents and 72 such contracts (79 and 61 of which are with two-year colleges) and approximately 50,000 members (incidentally the NEA also has more than one million K-12 public school members and the dues they bring in).

In 1972 there was a major re-organization of the Association in which all segments were placed under four large divisions with union organizing activities at all levels of education placed under the division of affiliate services.

Table 1a

CUMULATIVE FACULTY COLLECTIVE BARGAINING CONTRACTS - NEA

	<u>NEA</u>		
	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966•	0	1	1
1967	0	2	2
1968	0	2	2
1969	0	4	4
1970	1	6	7
1971	2	17	19
1972	2	35	37
1973	5	23	28
1974*	<u>0</u>	<u>0</u>	<u>0</u>
	10	90	100

*As of 3/15/74

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American Federation of Teachers

The American Federation of Teachers and its affiliate organizations was organized originally in 1916, affiliated with the American Federation of Labor in 1919, and has come into its own in higher education in the last decade after statutory rights to engage in collective bargaining began to be granted. In 1955 the AFT Executive Council formally recommended that locals address the importance of collective bargaining, especially for the compensation and working conditions of teachers. In 1962 an AFT affiliate, the United Federation of Teachers, won a collective bargaining election in the New York City Public School System and this led to aggressive, militant organizing activity by the AFT in the K-12 sector with many lessons being learned by College faculty members as well.

Actually the AFT had entered higher education as a labor organization before the NEA or the AAUP with the establishment of several locals for Professors at urban universities during the 1930's. In the middle and late 1960's and early 1970's more than 200 local campus chapters were established. They seem to have overcome the early reluctance of faculty members, some of whom questioned whether it was "professional" to join a union. In 1967 a full-time College and Universities Department was officially established and by the end of 1974 there were some 58 agents and 42 contracts (43 and 32 of which are in two-year colleges) with institutions of higher education (See Table 1b) and the AFT had a membership in that sector of approximately 30,000, principally in states with strong labor movements.

	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966	0	1	1
1967	1	3	4
1968	0	2	2
1969	1	4	5
1970	2	3	5
1971	3	9	12
1972	5	21	26
1973	2	12	14
1974*	<u>1</u>	<u>1</u>	<u>2</u>
	15	56	71

*As of 3/15/74

Source: The National Center For The Study of Collective Bargaining in Higher Education, Baruch College.

American Association of University Professors

A wag once remarked "How can the dowager learn the Watusi without getting a slipped disc -- is the major issue facing the AAUP." Founded in 1915 the Association's prime concerns over the years have been the protection of academic freedom tenure and due process, the advancement of faculty salaries by fostering minimum standards, and faculty participation in university governance. The national leadership for a long time resisted pressures to soften the organization's traditional opposition to collective bargaining. The Association's 1966 statement of policy on the "Representation of Economic Interests" reaffirmed its preference "that all faculty members participate in making decisions and protecting their economic interests through structures of self-government within the institution, with the faculty participating either directly or through faculty-elected councils or senates." The statement also supported the passage of state legislation requiring public institutions to establish "adequate internal structures of faculty participation in the government of the institution." Also during that year the AAUP Council voted to authorize AAUP Chapters

to seek recognition as bargaining agents at institutions where "effective faculty voice and adequate protection and promotion of faculty economic interests" did not exist, a position which was reaffirmed in policy statements in 1968 and 1969. However three additional restrictions were imposed: Chapters must obtain approval of the AAUP Central Office; no agency shop arrangements would be negotiated; and strikes and/or work stoppages were still discouraged.

Since 1969 the Association officially began to represent institutions of higher learning, primarily in the four-year college and university sector, but including community and junior colleges. Internal and external pressure led the association to openly debate the issue in 1971 and to establish a national policy in 1972 which stated that "where appropriate...the Association will pursue collective bargaining as a major additional way of realizing its goals in higher education", satisfying some traditionalists within the organization who feared for the abandonment of the typical professional development and enforcement of principles and standards of academic freedom and tenure. The 1973-1974 Committee N Report of the Association indicated that following the 1972 annual meeting resolution on collective bargaining "it has been the policy of the association to pursue 'selective' development of collective bargaining activity." That committee continues to discuss many of the issues facing the association such as the degree of central Association support to chapters engaging in collective bargaining, the possibilities of joint ventures, model language in contracts, and the question of whether college administrations will continue to cooperate with the Committee Z annual survey of compensation as the Association becomes increasingly more militant and competitive as a bargaining representative. A major question seems to be resolved concerning membership, for originally that was restricted largely to faculty members, but recently other professionals and even semi-professionals

seem to be gaining admittance and representation.

A slower starter than either of the aforementioned associations, the AAUP, by the end of 1974, had 27 agents and 17 contracts (See Table 1c), (3 and 1 with two-year institutions), and had a membership of approximately 75,000 (a decrease from a high of 90,000 in 1971) largely in four-year colleges and universities as opposed to the two-year institutions. Perusal of recent literature of the Association, both national and local, indicates that the rhetoric may be changing in order to remain competitive with the other associations.

Table 1c

CUMULATIVE FACULTY, COLLECTIVE BARGAINING CONTRACTS - AAUP

	<u>AAUP</u>		
	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966	0	0	0
1967	0	0	0
1968	0	0	0
1969	0	1	1
1970	2	1	3
1971	2	1	3
1972	6	1	7
1973	12	1	13
1974*	<u>0</u>	<u>0</u>	<u>0</u>
	22	5	27

*As of 3/15/74

Source: The National Center For The Study of Collective Bargaining in Higher Education, Baruch College.

Joint Efforts

Ever since 1967 there have been cooperative endeavors engaged in between the National Education Association and American Federation of Teachers in securing contracts and by the end of 1974 (See Table 1d) there were 22 agents and 15 contracts

(13 and 11 in two-year institutions) with the majority of these coming in 1971 and 1972 when there appeared to be greater enthusiasm over merging the two associations. What the future will hold remains to be seen, especially due to the reluctance displayed in early 1974 by the National Education Association. NEA-AAUP Cooperation at the University of Hawaii and AAUP-Independent Cooperation represent other joint ventures with potential for further development.

Table 1d

CUMULATIVE FACULTY COLLECTIVE BARGAINING CONTRACTS - AFT/NEA

	<u>AFT/NEA</u>		
	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966	0	0	0
1967	0	1	1
1968	1	1	2
1969	1	6	7
1970	0	7	7
1971	1	11	12
1972	3	10	13
1973	2	2	4
1974*	<u>0</u>	<u>0</u>	<u>0</u>
	8	38	46

*As of 3/15/74

Source: The National Center For The Study of Collective Bargaining in Higher Education, Baruch College.

Independent Bargaining Representatives

By 1974 there were 38 agents and 26 contracts (See Table 1e) negotiated by independent bargaining representatives (26 and 20 of them for two-year colleges). Thus this is a force that must be reckoned with. Comprehensive treatment in an article of this length of course is not possible; suffice it to say that the descriptions

At the University of Scranton the faculty chose a professional negotiating team known as the Faculty Council after its discontent over new salary scales negotiated by the University Senate. Composed of three faculty members elected at large, the Faculty Council was recognized by the University, and in early 1971 the first contract was approved at this private institution.

The University of Michigan Senate Assembly authorized a Committee on the Economic Status of the Faculty to gather information and to attempt to formulate a package agreed upon by the administration, and which is then sent to the Board of Regents, the Governor and the Legislator. Whether this becomes a more predominant mode in the public sector remains to be seen.

The Association of Community College Faculties, with its own independent professional staff, represents fourteen upstate two-year institutions in New York State, about half of the potential. In most instances the Association and the member colleges have chosen to deal directly with the sponsors rather than with the Board of Trustees. Needless to say, continued success depends upon many factors, especially the fiscal ability to compete with the larger bargaining representatives.

Table 1e

CUMULATIVE FACULTY COLLECTIVE BARGAINING CONTRACTS - INDEPENDENT

	<u>INDEPENDENT</u>		
	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966	0	0	0
1967	0	1	1
1968	0	1	1
1969	0	9	9
1970	1	10	11
1971	1	9	10
1972	3	11	14
1973	0	5	5
1974*	<u>0</u>	<u>0</u>	<u>0</u>
	5	46	51

*As of 3/15/74

1.1

FOOTNOTES CUT OFF

Faculty Senate, Councils, and/or Associations.

Most collective negotiations are two-way affairs between employees and employers, whereas many campus matters are of concern to at least three groups -- faculty, administrators, and students, - with staff and community also often interested. A very real question has been raised in higher education as to whether or not the traditional collegial faculty senates, councils, and/or associations can continue to play a meaningful role in college and university governance now that bargaining representatives have come upon the scene. The faculty senate, council, or association is often dependent upon institutional approval and possibly even fiscal support of some sort and, therefore, some feel it must be less effective. Others feel that because the Senate often includes administrators and students (and occasionally staff) it is really not representative of the faculty. Still others feel that the Senate has no real teeth for it is a "house organ", which atrophies in the shadow of a real bargaining agent. Finally, Senates generally speaking are institution-based and have little if any lobbying power with municipal or state legislative branches.

Harold Hodgkinson, in a 1972 study of broadly-based Senates, found that of 40 institutions which discontinued this mode of governance (688 others which responded still had this body) "in a large number of cases, the advent of a faculty union was the principal factor in the demise of the broadly-based campus senate....Many of our respondents felt that it was antithetical to the union's agenda to work cooperatively with other campus groups."

Yet to state that the Senate is not interested in having faculty employment conditions improved, as bargaining representatives wish to do, is of course in error. Some feel that it is hopeless to expect cooperation; others feel that some accommodation can be sought; and still others feel that a cooperative arrangement is absolutely necessary because in defining the scope of negotiations not all items traditionally reserved to be included in faculty participation and decision-making are permitted to be bargained. For example, in New York State, rulings have indicated that class size is not a mandatory subject of collective bargaining unless the effect of class size influences the number of faculty members to be employed, etc. There has been a blurring of the distinction between salary and academic matters. Indeed many bargaining representatives would include virtually everything under the phrase "conditions of employment" (which most public statutes include within the scope of bargaining). However, there are still some distinctions which might point to the need to retain faculty senates side-by-side with the bargaining representative, and hopefully not in competition in any way with them in order to continue to give the faculty a voice in matters which do not clearly fall within the scope of "salaries, hours, and conditions of employment." Some of these grey areas which are neither black nor white any more include:

- Admissions policies used to be clearly a Senate academic consideration; since they have consequence on faculty work load (class size) they have increasingly been found in bargaining agreements or at least in contract demands.

- Salaries may be clearly within the scope of the bargaining agent, but are other related matters as clear; for example, salaries are related to work load, which is related to optimum educational class size, which may be related to the question of diversity of offerings, which is related to curricular policies. In this "headbone-connected-to-the-neckbone" sequence, before one knows it the bargaining representative might express interest in curricular policies.
- Faculty-student ratio or counselor-student ratio.
- Total teaching load including office hours, committee assignments, and extra-curricular responsibilities.
- Criteria for placement on the salary schedule or for promotion including determination of teaching effectiveness: is this a salary or professional item? Salary increments - by professional academic merit or automatic?
- Academic freedom - an academic policy has now found its way into a majority of bargaining agreements.
- Overload teaching which may interfere with academic performance.
- Standards for student conduct, discipline, due process and grievance may bump up against an already negotiated faculty grievance system and may be objected to as "competing."
- Travel to professional meetings.
- Administrative appointments. This has already been challenged and many bargaining representatives are putting involvement in selection if not election of administrators in their contract demands.
- College calendar, including length of semester.
- Course scheduling assignments (made by whom, based on what?)
- Allocation of space.
- Budgets and budget priorities - as long as the sponsor can elect whether to fund or not fund an agreement obviously the bargaining agent is interested in the process of budget-making; but the ordering of budget

priorities (which is merely the institution's educational program written out in dollar format) is or should be a matter of interest for the entire faculty, and will increasingly become so in the years ahead.

--Goals and missions and objectives - to the extent that these dictate resource allocation they will increasingly become a matter of interest and contention.

In short, it is clear that in the next decade higher education must resolve the question of whether or not it will permit faculty groups to continue to participate in the governance of an institution of higher education and whether all such participation must be through the exclusive bargaining representative.

In summary, based on a reading of national statements and hundreds of contracts over the past five years it is the author's conclusion that while there have been stated differences on matters of tenure and promotion, salaries, work load and strategies by the national associations, the distinctions which may have existed are becoming blurred. Platforms of major representative agents probably will become indistinguishable in a few years, and we have a trend which indicates that it probably does not significantly matter which bargaining representative the institution selects for they are more alike than they are different and will become increasingly so. To project past differences upon the future is a clear error, for the truth of the matter is that these are all really bargaining agents questing for membership and educational power and this has homogenized the differences among competing groups.

THE STATUS OF STATE LEGISLATION*

"...where people refuse to decide, events will decide for them; and to allow events to decide impersonally is in itself a decision involving greater risks than affirming a point of view." - Michael Brick, Forum and Focus for the Junior College Movement: The American Association of Junior Colleges.

A significant handicap in higher education collective bargaining is the relative lack of legislation and legal precedence. Business establishments have over 30 years of federal and state law and labor board decisions to guide them with respect to such questions as appropriate bargaining units and other important matters. This is not to say that there is no legislation; some states have some legislation for employees in the public sector. Nor is case law lacking, although it is frequently contradictory. But there is no common act applicable to all. We have some federal past history as a precedent of sort including:

Commonwealth vs. Hunt - 1842

The Sherman Act - 1890

The Norris-LaGuardia Act - 1932

The Wagner National Labor Relations Act - 1935

The Taft-Hartley Act - 1947

The Landrum-Griffin Act - 1959

But with the possible exception of the National Labor Relations Act, it is not really directly applicable to higher education.

Why do we need a law? The First and Fourteenth Amendments of the United States Constitution give individuals the right to join but do not obligate an employer to bargain with those individuals or the group. The Iowa Supreme

*For a more comprehensive treatment of the subject see the work of Dr. Thomas

Emmet

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Court has indicated in the recent past that collective bargaining is permissible even without local statute, but, in August, 1969 the 7th Circuit Court of Appeals, in Lewallen, Alexander et al, vs. the Indianapolis Education Association, ruled that collective bargaining contracts can be overturned by taxpayers' suits if the collective bargaining was not specifically authorized by statute. In the absence of specific legislation the applicable law concerning rights of organization and collective bargaining is derived from the Common Law (as expounded in judicial decisions), Municipal Law (basic legislation including home rule provisions defining the powers of local government), and Constitutional Law. If college faculty members organize for bargaining purposes, unless there is enacted legislation specifically requiring public employers to bargain, the individuals would have no legally protected rights. Generally speaking, without a law:

- there would be a lack of definition (for example, no definition of what is an unfair labor practice or who the employer is: the Board of Trustees, the County, or the State);

- there would be no indication as to whether or not the agreement is to be written;

- there is a lack of explicit procedures; there is no stipulated way of determination of representation; How is an election to be held, or how is a bargaining representative to be named? there is a lack of stated method for unit determination (for example, supervisory personnel to be included or excluded); how would impasses be resolved, and so forth.

- there is no guidance with respect to the range of negotiable items;

In short, if you lack a law in a particular state you do not really know who bargains with whom about what.

At the federal level we have had some activity regarding public employees. Executive order 10988, issued by the late President Kennedy in 1962, allowed

limited rights of unionization and collective bargaining to federal employees, a general policy which has been continued by Executive Order 11491 issued by former President Nixon in 1969. Rights of unionization have been granted to postal employees under the Postal Reorganization Act of 1970 and, in addition, there have been a number of more recent bills introduced in the federal congress including House Bill 8677 (the Clay-Perkins Bill, known as the National Public Employment Relations Act of 1973); House Bill 9730 which would make public employees subject to the National Labor Relations Act; House Bill 8677 which would create a Public Employment Relations Commission at the national level; and, in 1974, Senate Bills 3294 and 3295 which would extend the right of organization and the right of representation and collective bargaining to employees of states and their political sub-divisions, but not to employees of the Federal Government.

One federal act, the National Labor Relations Act, has had an important influence on collegiate employer-employee relationships at least in the private sector. In the summer of 1970 Cornell University, in a suit involving non-professional employees, was told by the National Labor Relations Board that it had jurisdiction in the dispute. Since then the NLRB has ruled that it has jurisdiction over colleges with operating budgets of more than one million dollars. (Hence approximately 85% of private institutions, employing 95% of all faculty members in the private sector are covered). In April, 1971 the Board asserted jurisdiction over two branches of Long Island University. On May 26th of that year the NLRB dismissed an election petition at the University of New Haven because the unit did not include part-time faculty members. In June the AAUP asked the NLRB to issue general rules for private colleges including definitions of supervisors, appropriate organizations to serve as bargaining representatives, status of teaching fellows and research associates, and status of part-time teachers. Later that summer the AAUP, supported by the

AFT and a bargaining committee from the Law School at Fordham University, petitioned the NLRB to authorize an NLRB-supervised collective bargaining election at Fordham University. For the most complete treatment of this subject see Ralph E. Kennedy, "The Educators' Role in Educating the NLRB; Requirement of a Complete Record," Journal of College and University Law, Summer 1974, pp. 305-323, (especially the appendix listing major NLRB university decisions through early 1974).

The National Labor Relations Act expressly excludes from its coverage "the United States or any wholly owned government corporation...or any State

or political subdivision thereof." Thus in the past decade-and-a-half we have seen a crazy patchwork quilt of state laws enacted covering public employees. In great measure this legislation has been based on the federal model, with significant departures from it.

Wisconsin enacted the first comprehensive legislation in 1959. The first law expressly applied to post-secondary teaching personnel was that of Michigan in 1965, but the K-12 public sector was covered as early as 1961 in two states. Some 23 states have adopted laws from 1965 through 1974 which allow public employees to bargain with certain post-secondary public employees on matters of wages, hours, and working conditions. Of these 23, 14 have specific legislation dealing with public employees in post-secondary institutions, while in the other 9 there is no specific language, but institutions are included by implication or interpretation. Bargaining has occurred in 5 states without statutes. Of the 27 states without statutes 24 have had legislative activity since 1970 (excluding Louisiana, Mississippi, and South Carolina) which would permit some limited bargaining at least.

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Generally, legislation in effect refers to rights of self-organization, and deals with electing a representative, provides help in resolving disputes, establishes an agency to oversee the process in (20 of the 23 states with statutes 11 used newly created public employment relations board to administer the legislation and 9 used existing private sector labor boards or commissions), and all but three prohibit strike actions unless severely provoked (Pennsylvania, Hawaii and Alaska are the exceptions).

The tabular material which follows is largely based upon the work of Dr. Thomas Emmet and statistics gathered by The National Center for the Study of Collective Bargaining in Higher Education, Baruch College; the Academic Collective Bargaining Information Service; and the American Association of Community and Junior Colleges' 1974 Directory. Citations to all statutes, ordinances, and personnel rules and regulations related to labor management relations and the public sector adopted through the end of 1974 is available from the Industrial Relations Center, College of Business Administration, University of Hawaii.

While 23 States (See Table 2) have statutes, and 5 others without statutes have agents and/or contracts, activity is really concentrated in 8 states (where 174 of the unionized 227 colleges/campuses are located) - Illinois, Michigan, Minnesota, New Jersey, New York, Pennsylvania, Washington, and Wisconsin - representing 81.6 per cent and 85.1 per cent, respectively, of students and faculty members at unionized two-year institutions. Other States with significant numbers of students and/or faculty in unionized colleges are: Hawaii, Kansas, Ohio, and Oregon.

TABLE 2

23 States with legislation and agents and/or contracts at two-year colleges/
campuses, 1974

<u>State</u>	<u>Specific or Omnibus Legislation*</u>	<u>Colleges/ Campuses</u>
Alaska	A	6
Colorado	C	1
Connecticut	B	4
Delaware	B	3
Dist. of Columbia	-	1
Florida	A	2
Hawaii	A	7
Illinois	C	22
Iowa	B	0
Kansas	A	9
Maine	B	3
Maryland	C	1
Massachusetts	B	6
Michigan	B	29
Minnesota	A	18
Montana	A	1
Nebraska	A	0
New Hampshire	A	0
New Jersey	B	12
New York	A	41
Ohio	C	3
Oregon	A	4
Pennsylvania	A	13
Rhode Island	B	1
South Dakota	A	0
Vermont	A	0
Virginia	D	1
Washington	A	25
Wisconsin	B	<u>14</u>
Total		227

*For code see Table 3

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Table 3 lists by state the number of colleges/campuses* with contracts or agents, and the number of students and faculty members at such institutions. In the aggregate we find:

- 227 colleges/campuses out of 1146 (or 19.8 per cent) have contracts or agents (with contracts presumably currently being negotiated).
- These 227 colleges/campuses have a total enrollment of 959,973 or 33.2 per cent of the total faculty in American community and junior colleges.
- These 227 colleges/campuses employ 43,555 faculty members**, or 30.9 per cent of the total faculty in American community and junior colleges.
- Whereas 219 of this nation's 1146 community and junior colleges, or 19.1 per cent are independent, only 5 of the 227, or 2.2 per cent unionized colleges/campuses are.
- Of the 927 public community and junior colleges, 222 or 23.9 per cent are unionized; of the 219 independent institutions, 5 or 2.3 per cent are unionized.
- The average enrollment in American community and junior colleges in October 1973 was 2,526, the average enrollment in unionized colleges was 4,229.
- Similarly, the average size faculty in all institutions in the 1973-1974 academic year was 123, but in unionized institutions, it was 192.
- Some 27 states with 566 colleges/campuses had not a single contract or agent. The remainder of 361 non-unionized colleges/campuses were in States where there was at least one contract or agent.
- In only one State (Hawaii) were all colleges/campus represented by an agent. If only public institutions are counted, in three states, (Delaware, District of Columbia, Hawaii, Rhode Island), all public two-year institutions are represented; a few others are close (6 of 8 in Alaska, 29 of 32 in Michigan, 18 of 20 in Minnesota, 12 of 15 in New Jersey, 41 of 45 in New York State, 25 of 27 in Washington).

-Similarly, the percentage of student enrollment and of faculty in unionized institutions ranges from 0 to 100, with, as indicated above, the average 33.2 and 30.9 respectively. Some States are approaching the point where virtually all eligible faculty members are covered (eg., 82.9 per cent in Alaska, 91.8 per cent in Michigan, 82.8 per cent in Minnesota, 93.7 per cent in New York, 90.0 per cent in Rhode Island, 96.2 per cent in Washington, and 81.3 per cent in Wisconsin).

*In the statistics in this section it is important to understand how colleges/campuses are counted. The number of colleges/campuses are counted as the American Association of Community and Junior Colleges does in its 1974 Directory. For example, the City Colleges of Chicago show as seven separate campuses and, hence, are counted as seven even if they have only one contract; however, in the case of Miami-Dade Community College, despite the fact that it has three campuses because it is shown in the 1974 Directory as one, it is counted as one. Wisconsin has fourteen districts with thirty-seven campuses, but is shown as fourteen because in the 1974 Directory that is the way the statistics are reported.

**Note that full- and part-time faculty members are counted as in the 1974 Directory. No determination has been made as to whether both are in the same bargaining unit.

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	Total		Number of Colleges		Number of Colleges/Campuses with Contracts or Agents			Total Enrollment October 1973
	Total	Public	Independent	Dependent	Total	Public	Independent	
Alabama	23	18	5	0	0	0	0	32318
Alaska	9	8	1	6	6	0	0	7818
Arizona	14	13	1	0	0	0	0	65907
Arkansas	10	6	4	0	0	0	0	5660
California	104	98	6	0	0	0	0	849164
Colorado	16	16	0	1	1	0	0	31558
Connecticut	22	16	6	4	4	0	0	70695
Delaware	6	3	3	3	3	0	0	7920
District of Columbia	4	1	3	1	1	0	0	3170
Florida	32	28	4	2	2	0	0	134813
Georgia	24	15	9	0	0	0	0	27623
Hawaii	7	7	0	7	7	0	0	47969
Idaho	4	2	2	0	0	0	0	7369
Illinois	56	48	8	22	21	1	1	221376
Indiana	4	2	2	0	0	0	0	9891
Iowa	28	22	6	0	0	0	0	27953
Kansas	25	21	4	9	9	0	0	23920
Kentucky	21	14	7	0	0	0	0	16446
Louisiana	7	6	1	0	0	0	0	9866
Maine	6	5	1	3	3	0	0	5768
Maryland	20	17	3	1	1	0	0	62437
Massachusetts	39	18	21	6	3	3	3	49376
Michigan	36	32	4	29	29	0	0	153146
Minnesota	23	20	3	18	18	0	0	25777
Mississippi	25	18	7	0	0	0	0	27679
Missouri	20	14	6	0	0	0	0	39857
Montana	3	3	0	1	1	0	0	2126
Nebraska	14	12	2	0	0	0	0	13758
Nevada	4	4	0	0	0	0	0	8293
New Hampshire	10	7	3	0	0	0	0	3162
New Jersey	23	15	8	12	12	0	0	65765
New Mexico	13	12	1	0	0	0	0	7129

AMERICAN COMMUNITY AND JUNIOR COLLEGES, 1974: Extent of Collective Bargaining

	Enrollment of October 1973 in Colleges/Campuses with Contracts or Agents	Total Faculty 1973-1974	Number of Faculty as of October 1973 Colleges/Campuses with Contracts or Agents	State Legislation Status
Alabama	0	1517	0	D
Alaska	7150	469	389	A
Arizona	0	3078	0	D
Arkansas	0	337	0	D
California	0	26423	0	D
Colorado	2420	1787	129	D
Connecticut	5329	1436	270	C
Delaware	4353	331	160	B
District of Columbia	2298	176	75	-
Florida	9184	7697	475	A
Georgia	0	1294	0	D
Hawaii	47969	763	763	A
Idaho	0	426	0	D
Illinois	126922	9372	4945	C
Indiana	0	732	0	D
Iowa	0	1879	0	D
Kansas	10989	1348	619	B
Kentucky	0	947	0	A
Louisiana	0	445	0	D
Maine	2269	337	194	E
Maryland	7247	3203	368	B
Massachusetts	9844	2683	488	C
Michigan	141406	5496	5046	B
Minnesota	23154	1300	1077	B
Mississippi	0	1765	0	A
Missouri	0	2213	0	E
Montana	0	172	0	D
Nebraska	475	854	31	A
Nevada	0	567	0	A
New Hampshire	0	122	0	D
New Jersey	0	3179	2091	A
New Mexico	46848	339	0	B

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	Total Number of Colleges			Number of Colleges/Campuses with Contracts or Agents			Total Enrollment October 1973
	Total	Public	Independent	Total	Public	Independent	
New York	59	45	14	41	41	0	240903
North Carolina	67	57	10	0	0	0	72406
North Dakota	5	5	0	0	0	0	6459
Ohio	44	41	3	3	3	0	81720
Oklahoma	19	15	4	0	0	0	27654
Oregon	16	14	2	4	4	0	66459
Pennsylvania	48	34	14	13	13	0	81147
Rhode Island	2	1	1	1	1	0	6383
South Carolina	31	25	6	0	0	0	29627
South Dakota	5	2	3	0	0	0	1116
Tennessee	19	12	7	0	0	0	21770
Texas	64	56	8	0	0	0	161501
Utah	5	5	0	0	0	0	10773
Vermont	7	2	5	0	0	0	4374
Virginia	30	24	6	1	0	1	58120
Washington	27	27	0	25	25	0	104236
West Virginia	8	6	2	0	0	0	8032
Wisconsin	31	28	3	14	14	0	97237
Wyoming	7	7	0	0	0	0	7063
	1146	927	219	227	222	5	2894689

	Total Faculty 1973-1974	Number of Faculty as of October 1973 Colleges/Campuses with Contracts or Agents		State Legislation Status
New York	13820	12956		A
North Carolina	5116	0		D
North Dakota	351	0		D
Ohio	3937	903		C
Oklahoma	1234	0		D
Oregon	2740	1180		A
Pennsylvania	4257	2059		A
Rhode Island	299	269		B
South Carolina	2018	0		E
South Dakota	214	0		A
Tennessee	1269	0		D
Texas	8238	0		D
Utah	626	0		D
Vermont	383	0		A
Virginia	3007	52		D
Washington	5188	4989		A
West Virginia	402	0		D
Wisconsin	4828	3924		B
Wyoming	448	0		D
	140862	43555		

SOURCES:

American Association of Community and Junior Colleges' 1974 Community and Junior College Directory.

The National Center for the Study of Collective Bargaining in Higher Education, Baruch College, various data.

Academic Collective Bargaining Information Service, various data.

State Legislation Status is from Thomas Emmet, "Post-Secondary Public Employment Legislation: Revised Status Report-August, 1974," Special Report #4, Academic Collective Bargaining Information Service, August, 1974, and from a conversation the author had with Dr. Emmet in January, 1975.

The code is as follows:

- A(14)- States which have specific legislation which deals with public employees in post secondary educational institutions. (Note that New Hampshire allows bargaining with non-teaching employees only and probably should be classified in D; Kansas legislation is of the "meet and confer" type rather than mandatory).
- B(9)- States in which no specific or special post secondary mention in the language of the legislation of an omnibus public employee bill but where by implication or interpretation post secondary personnel and institutions are included. (Note that in Connecticut, Maine, and Wisconsin these statutes apply only to vocational technical institutions).
- C(4)- States which have no collective negotiations legislation for post secondary education but in which there are de facto post secondary contracts or employee unit recognition and in which some legislative activity has taken place since 1970. (For example, in Maryland a city ordinance allows the Community College of Baltimore to bargain collectively, but State legislation submitted to the legislature for the past five sessions has failed to pass).
- D(20)-States in which there has been legislative activity since 1970.
- E(3)- States in which no activity has taken place since 1970 with regard to Collective Bargaining legislation.

What are the major trends which can be found from the data cited above?

For whatever reason (See Table 4a-1 and 2), more two-year than four-year institutions have been unionized and more institutions have in the public rather than in the private sector. Taking two-year institutions as a whole there have been only 5 private institutions with contracts and agents as opposed to 222 public ones. However it is interesting to note that in 1973 of the first-time contracts signed 29% were signed by four-year private colleges, 42% by four-year colleges, and 29% by two-year public colleges. Since a greater proportion of two-year colleges has already been unionized, as the trend toward unionization continues in the future we should see a greater proportion of activity in the four-year sector. Nonetheless two-thirds of the faculty are in two-year institutions without agents, and we shall continue to have a good deal of growth in this sector.

Table 4a-1

CUMULATIVE FACULTY COLLECTIVE BARGAINING CONTRACTS

	<u>PUBLIC</u>			<u>PRIVATE</u>		
	<u>4 year</u>	<u>2 year</u>	<u>Total</u>	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966	0	2	2	0	0	0
1967	0	7	7	1	0	1
1968	1	6	7	0	0	0
1969	1	24	25	1	0	1
1970	4	27	31	2	0	2
1971	5	47	52	4	0	4
1972	8	78	86	11	0	11
1973	11	43	54	10	0	10
1974 *	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>
	30	235	265	30	0	30

*As of 3/15/74

Source: The National Center For The Study of Collective Bargaining in Higher Education, Baruch College.

Table 4a-2 (see attached)

Table 4a-2

245¹
INSTITUTIONS WITH CURRENT COLLECTIVE BARGAINING AGENTS
AND 174 CONTRACTS*

Agents for Both Public and Private						
	4-Year No. Agents	2-Year No. Agents	Total No. Agents	4-Year No. Con- tracts	2-Year No. Con- tracts	Total No. Con- tracts
AAUP	24	3	27	16	1	17
NEA	16	79	95	11	61	72
AFT	15	43	58	10	32	42
NEA/AFT	9	13	22	4	11	15
Independent	12	25	38	6	20	26
NEA/Independent	1	2	3	1	1	2
NEA/AAUP	1	1	2	0	0	0
Totals	78	167	245	48	126	174

Agents for Private						
	4-Year No. Agents	2-Year No. Agents	Total No. Agents	4-Year No. Con- tracts	2-Year No. Con- tracts	Total No. Con- tracts
AAUP	13	1	14	9	0	9
NEA	6	1	7	3	1	4
AFT	7	2	9	4	0	4
NEA/AFT	6	0	6	3	0	3
Independent	7	1	8	3	0	3
NEA/Independent	1	0	1	1	0	1
Totals	40	5	45	23	1	24

Agents for Public						
	4-Year No. Agents	2-Year No. Agents	Total No. Agents	4-Year No. Con- tracts	2-Year No. Con- tracts	Total No. Con- tracts
AAUP	11	2	13	7	1	8
NEA	10	78	88	8	60	68
AFT	8	41	49	6	32	38
NEA/AFT	3	13	16	1	11	12
Independent	5	25	30	3	20	23
NEA/Independent	0	2	2	0	1	1
NEA/AAUP	1	1	2	0	0	0
Totals	38	162	200	25	125	150

¹ The multicampus units have been counted as one agent and one contract except CUNY and SUNY which each has been counted once under four-year and two-year for both agent and contract. University of Hawaii and Vermont State Colleges counted similarly for agent until contracts are signed.

If each unit of the multicampus institutions were counted separately, there would be 359 colleges with agents rather than the 245 summarized herein.

* Campuses Covered by Agents	
136	four-year
223	two-year
Total	359 Campuses

Campuses Covered by Contracts	
112	four-year
165	two-year
Total	277 Campuses

(Updated 11/1/14)

Source: The National Center For The Study of Collective Bargaining in Higher Education, Baruch College.

Unionization in the public sector as well as in higher education is a relatively new phenomena. From Table 4b-1 and 2 it can be seen that the bulk of the activity occurred since 1969. We have had statutes enacted in just less than half of the states, but we have seen great legislative activity in some of the others. Organization has been relatively concentrated in 8 states, out of 28 with agents and/or contracts at two-year colleges, with some organization occurring in states without statutes, especially since the NLRB decision in 1970 relating to the private sector. It is obvious that as more state legislation is approved we shall see greater activity in those states which previously restricted the right of collective bargaining to the private sector. It is estimated that by 1980, the end of this current decade, virtually every state in the nation will allow collective bargaining for employees of higher education institutions, and some feel that within five years after that virtually all public employees will be covered and a significant percentage of private ones as well.

Table 4b-1

CUMULATIVE FACULTY COLLECTIVE BARGAINING CONTRACTS - TOTAL

	<u>4 year</u>	<u>2 year</u>	<u>Total</u>
1966	0	2	2
1967	1	7	8
1968	1	6	7
1969	2	24	26
1970	6	27	33
1971	9	47	56
1972	19	78	97
1973	21	43	64
1974*	<u>1</u>	<u>1</u>	<u>2</u>
	60	23 235	295

Source: The National Center For The Study of Collective Bargaining in Higher Education, Baruch College.

Table 4b-2

Year in which first faculty collective bargaining contract was signed:

1966	2
1967	6
1968	3
1969	18
1970	24
1971	34
1972	57
1973	22
1974	<u>8</u>
	174

Source: The National Center For The Study of Collective Bargaining
in Higher Education, Baruch College.

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While four-year colleges represent 31% of all agents chosen since 1967, during 1973 four-year private colleges accounted for 40% of the new agents, reflecting the significance of new trends: one toward increased activity in the four-year sector indicated above, and especially increased activity in the private sector following the Cornell-NLRB decision of 1970. While a few people feel that economic uncertainty may hinder unionization, especially in the private sector, the more knowledgeable participants feel otherwise. For instance at a November, 1974 collective bargaining conference with representatives from a dozen states present, Theodore W. Kheel, the labor mediator and arbitrator, indicated: while college faculties now organized are mainly in public institutions, "that situation is going to change. Private colleges and universities because of the depressed economy, are being forced to depend more and more on public subsidies. That will eventually compel them to bargain with unions that represent faculties in the public institutions."

A major unknown is the degree to which the major bargaining representatives can overcome their competitive attitude toward one another, attitudes which are financially costly and which have forced some of the representatives to take more extreme ideological positions than they otherwise might have in an effort to compete. Reference has already been made to 15 contracts negotiated by NEA/AFT merged affiliates. At the 1973 NEA National Convention, a resolution was passed to begin affiliation talks, but by early 1974 these were broken off; if they can resume talks in the future this would have a significant effect. One of the most intensive teacher organization battles at the K-12 level currently rages in Florida, and apparently is being scheduled for California, with both agencies deploying extensive national staff office personnel who seem to have forgotten all about the possibilities of mergers.

If the NEA and the AFT do not cooperate, perhaps one or the other will seek out other partners.

In 1973, of the first-time contracts negotiated, the AAUP accounted for 42%, the NEA for 52% and the AFT for 6%. It is conceivable, for example, that the NEA might cooperate further with the AAUP as occurred in a late 1974 merger at the University of Hawaii.

Battle lines are drawn; strategy is being planned. At stake is the majority of higher education faculties and institutions. All must eagerly await the results. What has past is just the beginning. "What's Past is Prologue", as Shakespeare wrote in The Tempest.

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